IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

REMARKS

Restriction Requirement

Election without Traverse

In response to the restriction requirement set forth in the Office Action dated **February 13, 2004**, the claims of Group I (claims 1-16) are elected without traverse.

Election of Species

Provisional Election with Traverse.

Applicant provisionally elects the species of FIGS. 1, 2, 5-10, and 12-13 with traverse. Further, claims 1-16 are provisionally identified as readable upon this species.

Burden for Restriction Not Met.

The election of species is traversed, as the burden required for such an election has not been met.

A requirement for an election of species requires a showing that the inventions at issue are either independent or distinct.[1] Such a showing is not discretionary, but mandatory. Examiners <u>must</u> provide reasons and/or examples to support conclusions.[2]

In the present case, the rejection has simply recited two alleged species without an indication as to what makes the species independent or distinct, as required. Without the presentation of reasons and/or examples as required, the Examiner's burden for requiring an election has not been met – and thus the requirement is traversed.

Without an indication as to the grounds on which an election is being imposed, it is impossible for Applicant to argue why the grounds for rejection may be in error. For this reason, Applicant respectfully requests a reconsideration of the election requirement pursuant to CFR §1.143.
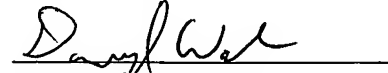
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[1] See MPEP §803, §806.04 (for independence of species), and §806.04(b) for distinctness of species.
[2] See MPEP §803.

It is believed that the requirements for restriction have been traversed and the application may now be examined on the merits. Such action is respectfully requested.

Respectfully Submitted,

Darryl Walker March 12, 2004

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